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March 25, 2003

REDACTED – FOR PUBLIC INSPECTION

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: *In the Matter of Application of SBC Communications Inc., Michigan Bell Telephone Company, and Southwestern Bell Communications Services, Inc. for Provision of In-Region, InterLATA Services in Michigan, WC Docket No. 3-16*

Dear Ms. Dortch:

AT&T respectfully submits this ex parte letter¹ in response to requests from the Commission Staff for additional information on a range of OSS issues, and to respond to SBC's reply submissions and recent ex parte submissions² concerning the extent to which SBC has shown that it is providing CLECs with non-discriminatory access to its OSS. AT&T's prior submissions have demonstrated in detail that, in a number of respects, SBC is not providing CLECs with nondiscriminatory access to OSS. Nothing in SBC's reply comments and ex parte submissions overcomes that showing.

SBC claims, in its March 14 ex parte letter (at 1), that this Commission can approve its application "based on the record in place on January 16, 2003." The Department of Justice (DOJ) disagreed, and rightly so. As AT&T showed in its Reply Comments, the evidence of SBC's OSS disfunctionality and discrimination precludes any finding that SBC had fully implemented its OSS obligations as of January 16, 2003.

¹ Also attached is the supplemental declaration of Sarah DeYoung and Walter H. Willard.

² See SBC's Joint Reply Affidavit of Mark J. Cottrell and Beth Lawson Regarding Operations Support Systems; Ex Parte Letter from Geoffrey M. Klineberg to Marlene H. Dortch (Mar. 14, 2003); Ex Parte Letter from Geoffrey M. Klineberg to Marlene H. Dortch (Mar. 17, 2003).

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Tacitly acknowledging the inadequacy of its initial OSS showing, SBC then coyly suggests that the Commission need not rely, but might merely “tak[e] into account” various “improvement plans” that SBC “has now formally submitted to the state commission.” *Id.* at 2-3. In SBC’s view, its improvements plans might be “accounted for” in a way that is analogous to the improvements in an interim loop-qualification process (“LFACS”) that Verizon had committed to make in Massachusetts in order to provide DSL competitors with access equal to what Verizon enjoyed. *Id.*

SBC’s suggestion should be categorically rejected, for its acceptance is irreconcilable with the complete-when-filed rule.³ Nothing in the *Massachusetts 271 Order* remotely supports SBC’s tacit request for a wholesale abandonment of the complete-when-filed rule here. Indeed, as shown below, approval of SBC’s Michigan application is barred by the statutory command that a BOC applicant demonstrate that it has “fully implemented” each checklist obligation, including providing non-discriminatory access to unbundled network elements (here, OSS), before the Commission may approve its application. *See* 47 U.S.C. 271(d)(3)(A)(i).

Ironically, Verizon’s Massachusetts application does provide a telling comparison to SBC’s Michigan application, but not for the reason SBC suggests. The *Massachusetts 271 Order* makes clear that LFACS was the *only* OSS area in which the Commission found that CLECs had submitted any significant evidence of discriminatory access to OSS. Nevertheless, the evidence of LFACS discrimination was reduced in significance by evidence that Verizon’s interim process performed acceptably. Verizon provided data LECs with loop qualification “quickly and electronically,” within “two hours” of the request.⁴ The Commission deemed this sufficient for checklist compliance, particularly in light of the “comprehensive detail about the business rules and field format requirements of its new loop information processes,” the “prioritized time frame” for implementation, and “firm completion dates.”⁵ Even so, the Commission was careful to note that “not all interim processes and change management proposals may be sufficient for checklist compliance.”⁶

By contrast, SBC’s attempt to analogize the many fingers it keeps placing in its perpetually leaking OSS dike to the single, efficient repair discussed in the *Massachusetts 271 Order* has no merit. SBC’s many general plans and promises for needed improvement in a host of areas is a world away from the focused response, the detail about changes to business rules and field formats, and the prioritized time frame and fixed due dates for completion, that Verizon provided for LFACS. In some cases, SBC has not yet even proposed to address the root causes

³ *Ameritech Michigan 271 Order* ¶¶ 50-55.

⁴ *Massachusetts 271 Order* ¶ 64.

⁵ *Id.* ¶¶ 61-63.

⁶ *Id.* ¶¶ 61 n.182.

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of many of its problem. Thus, SBC understandably does not compare its performance with Verizon's performance in the principal OSS areas at issue in this application. Were it to do so, the differences would starkly confirm that SBC's application is premature.⁷

1. **BCNs:** SBC has concededly failed to send AT&T over 20,000 timely BCNs, with admitted delays of "up to nine days" and actual delays exceeding a month, and with an acknowledged inability to meet (in Michigan) even SBC's Texas performance standards (85% in 3 days, 95% in 5 days).⁸ AT&T has described the extent and serious anticompetitive impact of SBC's discriminatory performance in detail in prior submissions.⁹ It therefore suffices to observe here, in response to SBC's Massachusetts' analogy, that SBC has yet to provide CLECs with any proposed solution to its BCN problem that even remotely provides either "comprehensive detail about the business rules and field format requirements" or a "prioritized time frame" and "firm completion dates."¹⁰

2. **Billing:** There also is undisputed evidence – supplied by SBC itself – that SBC has not yet generated accurate wholesale bills and that SBC's efforts to correct its inadequate billing processes are ongoing. AT&T has set forth this evidence, as well as other evidence describing the limits and errors in SBC's wholesale billing, in a separate ex parte submission.¹¹ Here again, SBC has no detailed, enforceable plan to identify and fix a limited billing problem; rather, it is in the process of identifying problems that keep emerging. The record thus precludes any finding that SBC has met its obligation to provide accurate and timely wholesale bills.

⁷ See, e.g., *Massachusetts 271 Order* ¶¶ 83-84 (relying upon commercial data showing that Verizon "consistently meets" its applicable "benchmark" by delivering 97 percent to 100 percent of BCNs the next day, and noting CLECs had no "specific evidence" of BCN problems, and cited only to KPMG exceptions that KPMG had closed); *id.* ¶ 99 (noting "absen[ce]" of evidentiary "support" for CLEC complaints about Verizon's wholesale billing, with CLECs again pointing only to closed KPMG exceptions); *id.* ¶ 100 (no evidence of a systemwide problem with timely and accurate delivery of LLNs); *id.* ¶ 112 ("several competing carriers are placing commercial volumes of orders via EDI with relatively few rejects"); *id.* at 102, 105, 113 ("Verizon has consistently adhered to [its] change management process over time" without CLEC complaints, and committed only a "relatively small number of documentation errors"); *id.* ¶¶ 6, 47 (both KPMG and PriceWaterhouse Coopers had completed their respective tests and reviews).

⁸ See, e.g., Ex Parte Letter of Richard E. Young to Marlene H. Dortch at 1-2 & n.8 (March 19, 2003) ("AT&T's BCN Ex Parte Letter"); see also DeYoung/Willard Supp. Decl. ¶ 143-148.

⁹ See, e.g., AT&T's BCN Ex Parte Letter.

¹⁰ Cf. *Massachusetts 271 Order* ¶¶ 62-63.

¹¹ See Ex Parte Letter from Alan C. Geolot to Marlene H. Dortch (March 21, 2003).

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3. **LLNs** In Michigan, SBC has amassed an extraordinary record of breaking promises that it has fixed longstanding LLN problems. AT&T's response to SBC's unsuccessful effort to brush aside this record is set forth at length in the attached Supplemental Declaration of Sarah DeYoung and Walter H. Willard and in the forthcoming Supplemental Declaration of Karen Moore and Timothy Connolly, and is summarized below.

SBC errs first in attempting (SBC Reply at 25 n.21) to justify its LLN record as no different than that approved in the *Georgia/Louisiana 271 Order* or the *Pennsylvania 271 Order*. In the former, the Commission found that only one CLEC complained of a single line loss problem, which BellSouth had promptly corrected, and which did not "appear to be indicative of a systemic problem."¹² In the latter, Verizon presented data that far less than one percent of the LLNs across the entire BellSouth footprint were affected.¹³ In Michigan, by contrast, SBC's problems delivering timely and accurate LLNs extend back over a year, have prompted findings by the Michigan Commission (and in Illinois by the ICC) that SBC's performance has been seriously deficient, and led the DOJ to conclude that problems of "missing notification, notifications lacking conversion dates, notifications omitting the disconnected telephone number, and unreadable notifications" are ones that "may recur" and warrant the Commission's "serious attention."¹⁴

SBC also errs in claiming that its recent LLN problems are insignificant because they affect only 1.8 percent of LLNs sent.¹⁵ SBC bases this calculation on the reports of three CLECs of LLN failures involving 13,500 LLNs between August 2002 and January 2003.¹⁶ AT&T will address at length in a separate ex parte submission the factual inconsistencies and infirmities in the data and calculations on which SBC has based these claims. But even on its face, the calculation is suspect because CLECs can only report the erroneous LLNs of which they are aware – which may represent only a subset of SBC's total failures to transmit LLNs for any given period – and SBC has provided no evidence (or even an assertion) that other CLECs did not have similar LLN errors that neither they nor SBC has yet reported.¹⁷

¹² *Georgia/Louisiana 271 Order* ¶ 163.

¹³ *Pennsylvania 271 Order* ¶ 52 & n.211.

¹⁴ See DOJ Eval. at 9-10 and nn. 36-40.

¹⁵ Cottrell/Lawson Joint Reply Aff. ¶ 96.

¹⁶ SBC Reply Comments at 24-25; Cottrell/Lawson Joint Reply Aff. ¶ 96; *but see* SBC ex parte Letter of Geoffrey M. Klineberg to Marlene H. Dortch regarding LLNs (March 20, 2003) Attachment at 2 fn. 4 (now attributing 20,000 erroneous LLNs to August 15-September 11, 2002 time period).

¹⁷ DeYoung/Willard Supp. Decl. ¶ 112.

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SBC's attempt to minimize the significance of its LLN errors is also not well-taken. The evidence is clear that LLN errors have a substantial anticompetitive impact. Covad has set forth the large volume of complaints it has received due to double-billing caused by late LLNs. In an effort to minimize such complaints, AT&T has implemented systems and procedures designed to alert AT&T of potential line losses regardless of whether AT&T receives notice of them from SBC. Despite this effort, AT&T has received such customer complaints and has generated customer bills that a timely and accurate LLN would have enabled AT&T not to bill.¹⁸

SBC's reliance on BearingPoint's review of its June 2002 LLN data is unavailing. BearingPoint looked only at the timeliness and accuracy of the LLNs it received, without examining the actual performance of the LLN systems themselves or the extent to which the systems were consistently providing accurate LLNs over time.¹⁹

Finally, SBC's reliance on its two recent LLN improvement plans – submitted February 13, 2003, and March 13, 2003 – also fails to salvage its LLN performance. These plans contain only SBC's promises to improve its communications with CLECs about LLN problems. They lack even a commitment to resolve the root causes of faulty and delayed LLNs, let alone a detailed plan for fixing those problems.

The need for such a remedy is all the more acute in light of SBC's latest revelation of erroneous LLNs concededly due to a longstanding LLN problem. On March 6, 2003, SBC notified CLECs by Accessible Letter that it had become aware of "situations where notifications [LLNs] were sent on lines that CLECs did not lose."²⁰ Then on March 14, 2003, SBC further explained the root cause of the erroneous LLNs, which reflected a problem SBC has long had in dealing with "partial migrations."²¹ The problem affected 38 CLECs and involved 908 erroneously sent LLNs.²² SBC's list of erroneous LLNs sent to AT&T included one with a conversion date of May 10, 2002.²³

That SBC failed to learn of this problem until March 2003 is extraordinary given the representations it has made to the Michigan PSC that the LLN problems related to partial migrations were resolved. SBC first identified the problem in January 2002, and assured the Michigan PSC in reports filed on April 1 and May 1, 2002, that the problem would be fixed by a

¹⁸ *Id.* ¶ 119.

¹⁹ *Id.* ¶ 120.

²⁰ *See id.* ¶ 129 (quoting AL No. CLECAMSO3-019).

²¹ *See id.* (quoting AL No. CLECAMSO3-021); *see also* SBC March 14 Ex Parte at Att. A ¶¶ 19, 20.

²² *Id.* ¶ 130.

²³ *Id.* ¶ 130.

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systems change to be implemented on May 3, 2002.²⁴ SBC later conceded that this fix was unsuccessful, however, and implemented another fix on June 3, 2002.²⁵ This time, SBC claimed categorically that “with the June 3, 2002, changes, all known system issues with the Line Loss Notification process have been resolved.”²⁶ SBC stressed the point once again in response to complaints by Z-Tel that partial migration orders were still causing SBC to generate erroneous LLNs. SBC told the Michigan PSC that SBC had analyzed “all partial migration orders” since June 3, 2002, that SBC had “re-examin[ed]” all orders for the first two weeks of July, 2002, that SBC had “verified a 100% accuracy rate for reporting partial migration orders,” and accordingly that SBC “considers this issue closed.”²⁷

SBC’s record of claiming – incorrectly – that SBC has fixed its LLN problems, and in particular its problems due to partial migrations are telling. They confirm that SBC’s claims today that it has resolved its LLN timeliness and accuracy should be given no weight. SBC instead should be required to demonstrate with consistent and verifiable performance over time that it has fixed its longstanding inability to generate timely and accurate LLNs.

4. **Order Rejects:** Numerous OSS deficiencies have caused SBC to err in rejecting approximately 50,000 AT&T’s orders, creating average processing delays of eight to nine days.²⁸ The anticompetitive impact of these erroneous rejects is substantial.

For example, to respond to SBC’s erroneous rejection of approximately 50,000 AT&T orders, AT&T has had to dedicate numerous hours of personnel time and has incurred substantial costs, including the charges that it must pay to SBC for submission of a supplemental order. Generating supplemental orders, in turn, has delayed provisioning of service to the customer. That delay is further increased by SBC’s design of its OSS, which causes such supplemental orders to fall out for manual processing (which also increases the risk of errors in provisioning). As a result of such delay and the increased risk of provisioning errors, AT&T’s reputation in the marketplace and ability to retain new customers has been damaged. In some instances, SBC’s erroneous rejections have caused AT&T’s customers to cancel their service. SBC, by contrast, incurs virtually no costs or competitive liability for its erroneous rejections of orders due to its failure to provide advance notice of changes. Whenever AT&T submits supplemental orders to replace the rejected orders, no data regarding the original orders is reflected in SBC’s reported performance results. Thus, any delays or other problems caused by the erroneous rejections will not be reported by SBC – and SBC will pay no financial penalties

²⁴ See *id.* ¶¶ 134-135.

²⁵ See *id.* ¶ 135.

²⁶ See *id.* ¶ 137 (citing and quoting SBC’s July 2, 2002 Report).

²⁷ See *id.* ¶ 138 (citing and quoting SBC’s August 1, 2002 submission to Michigan PSC on LLNs).

²⁸ DeYoung/Willard Supp. Decl. ¶¶ 10-11.

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regarding them under its performance assurance plan. Because SBC is able to escape such liability when a CLEC must submit supplemental orders to replace the rejected orders, it has no reason to improve its performance.

The costs to AT&T of SBC's erroneous rejects thus include (but are not limited to) labor costs to manually correct the errors and rework the orders, and lost revenue from delays in beginning customer service, and from loss of customers due to the provisioning delay. In addition, AT&T estimates that it loses approximately one out of every three new customers that is subjected to such delays in order processing by SBC.

SBC has "acknowledge[d] certain missteps on its part with regard to the incidents of which AT&T complains,"²⁹ and hence the erroneously rejected order cannot be attributed to CLEC errors. Indeed, other CLECs, including CoreComm, Choice One, and Talk America have reported order rejection problems to SBC,³⁰ and AT&T's order rejection problems have occurred with both LSOG 4 and LSOG 5.³¹ SBC also has not refuted AT&T's showing that these order rejections are traceable not to CLEC errors, but to SBC's failures to provide clear and unambiguous documentation of its EDI requirements, and to follow its change management process.³²

5. **Change Management, Documentation, Test Environment:** SBC has tried to defend its record or poor change management with hypertechnical distinctions between true "change management" violations and "inadvertent" blunders that disrupted CLEC access to OSS. Either way, of course, SBC's record precludes any finding that CLECs have stable and reliable access to nondiscriminatory OSS. Although SBC has admitted that one of its errors that caused certain erroneous rejects – the "L100" error – was a CMP violation,³³ others were as well. For example, the G408 error resulted from programming changes by SBC to its interface without notice to CLECs,³⁴ and in which SBC's justification of merely conforming its interfaces to stated requirements conflicts with AT&T's unrebutted showing (and SBC's tacit admission in an Accessible Letter) that SBC's prior documentation was ambiguous.³⁵ Other SBC-caused rejects

²⁹ Cottrell/Lawson Joint Reply Aff. ¶ 22.

³⁰ See DeYoung/Willard Supp. Decl. ¶¶ 17-18 and Attachment 2.

³¹ See DeYoung/Willard Supp. Decl. ¶ 16.

³² See *id.* ¶¶ 11, 27-89.

³³ See *id.* ¶ 34.

³⁴ See *id.* ¶ 44.

³⁵ *Id.* ¶¶ 47-48. The attached supplemental declaration of DeYoung/Willard also refutes SBC's claims that other erroneous rejections did not involve, at least in substantial measure, violations of SBC's CMP. See *id.* ¶¶ 53-77; see also *id.* at ¶¶ 78-82 (discussing impact of SBC's CMP violations and poor documentation of IDL changes upon AT&T's access to pre-ordering

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also resulted from CMP errors,³⁶ although SBC's shifting and inconsistent explanations for these errors make the analysis more difficult than it should be.³⁷

In any event, SBC cannot deny (a) that the Michigan Commission has agreed with AT&T that SBC's poor change management was responsible for at least some of SBC's poor performance with respect to wrongly rejected orders; (b) that the Michigan Commission compelled SBC to submit a revised CMP; and (c) that there is no evidence now – and necessarily could not be any evidence at this early juncture – that SBC has “adhered” to its newly announced CMP “over time.” Accordingly, until SBC demonstrates that it is consistently providing CLECs with adequate notice and an opportunity to object to changes to existing interfaces consistent with the new CMP, SBC may not reasonably be found to have fully implemented nondiscriminatory access to OSS.

With respect to documentation, the record of SBC's documentation errors is overwhelming,³⁸ as is the evidence that links these errors to order rejections by SBC.³⁹ SBC's pattern of poor documentation extends to its implementation of LSOG 5. SBC is wrong to contend that this Commission, in approving SBC's California 271 application, also approved SBC's implementation of LSOG 5. In the *California 271 Order*, the Commission had no record of poor implementation of LSOG 5 to review, and held only that CLECs had been able to submit “over 500” orders without problem.⁴⁰ In SBC's Ameritech region, by contrast, SBC was required to disseminate more than 1,000 pages of revisions to its original LSOG 5 documentation, thereby effectively violating the CMP,⁴¹ and immediately after AT&T migrated to LSOG 5 in early December 2002, AT&T experienced substantial numbers of wrongly rejected orders as well as delayed BCNs.⁴²

SBC also fails to defend its discriminatory restrictions on use of its test environment. Its latest suggestion that “AT&T should develop, manage, and pay for its own

interface (CORBA)).

³⁶ See, e.g., *id.* ¶¶ 49-50, 53 (erroneous “H325” and “B103” rejections caused by SBC's improper application of LSOG5 edits to LSOG4 orders); *Id.* ¶ 58 (rejections due to the sudden inability of the OSS to read hunting information); *Id.* ¶ 83 (order rejections for failure to complete “DACT” field of LSR caused by unannounced change by SBC to its OSS).

³⁷ See *id.* ¶ 28 (describing changes in SBC's explanations for erroneous rejections).

³⁸ See, e.g., Reply Comments of AT&T at 11-12, 14-16, 25-26.

³⁹ See, e.g., DeYoung/Willard Supp. Decl. ¶ 78-79.

⁴⁰ See *California 271 Order* ¶¶ 79-80 & n.255; cf. SBC Reply Comments at 21 n.18.

⁴¹ See, e.g., DeYoung/Willard Supp. Decl. ¶¶ 74-75.

⁴² See, e.g., *id.* ¶¶ 58, 60, 63, 83.

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internal testing systems – just as SBC has done” (SBC Reply at 21) is farcical. SBC uses a single test environment to test its systems, and AT&T – which cannot compete with SBC in the local market unless it can test the interaction of its own systems with SBC’s OSS.⁴³

6. **Pre-Ordering Outages:** SBC’s reliance on its PM 4 data to overcome AT&T’s showing of excessive outages that precluded AT&T from electronic access to SBC’s pre-ordering functionality has no more merit than SBC’s reliance on PM 13 data for LLNs. PM 4 understates the outages CLECs effectively suffer by failing to capture outages that block only certain pre-ordering queries, or that disproportionately affect some CLECs and not others. Accordingly, it is not surprising that AT&T’s data show substantially longer outage periods – indeed, nearly twice as long – as do SBC’s data.⁴⁴

In short, SBC’s provision of access to its OSS is beset with pervasive and longstanding OSS problems with which SBC and CLECs have long struggled and which SBC has yet to overcome. The evidence shows a failure in multiple respects to provide CLECs with nondiscriminatory access to OSS. SBC’s modest prospective implementation plans fall far short of showing even that SBC will come into compliance by some future date certain, let alone that SBC has now fully implemented its nondiscriminatory access obligation with respect to OSS. Accordingly, this Commission should reject SBC’s Michigan application.

Yours sincerely,

/s/ Richard E. Young

Richard E. Young

cc: John P. Stanley
Gina Spade
Susan Pié
Layla Seirafi-Najar
Dorothy Wideman
Ann R. Schneidwind

⁴³ See *id.* ¶¶ 166-172.

⁴⁴ See *id.* ¶ 97-99; Moore/Connolly Supp. Decl. (forthcoming).